

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

CRIMINAL 05-133CCC

1) MALDONADO-CABRERA
a/k/a Teo (Counts One and Two)
2) JAVIER REYES-TORRES
a/k/a Héctor (Counts One and Two)
3) NORMA I CARTAGENA
a/k/a I've (Counts One and Two)
4) RAUL MEDINA-CRUZ
a/k/a Juanito (Counts One and Two)
5) NORMA J. FLORES-COLON
a/k/a Judith (Counts One and Two)
6) LUIS D. MARTINEZ-RUIZ
a/k/a Davisito (Counts One and Two)
7) RUBEN LUGO-CARTAGENA
a/k/a Rubencito (Counts One and Two)
8) JOSEAN PIÑERO-RODRIGUEZ
a/k/a Josean (Counts One and Two)
9) JOSE MIGUEL VEGA-RIVERA
a/k/a Gelin (Counts One and Two)
10) MARCOS CHUPANI-MALAVE
a/k/a Marquitos (Counts One and Two)

Defendants

ORDER

Having considered all of the relevant documents regarding the Motion to Suppress filed by defendant Luis D. Martínez-Ruíz on August 23, 2005 (**docket entry 115**) and U.S. Magistrate-Judge Delgado-Colón's concerns on whether there was indeed a need for an evidentiary hearing, as well as her Order on defendant's Motion for Disqualification issued on October 5, 2005 (**docket entry 137**), the Request for Review of Magistrate's Refusal to Disqualify Herself filed by defendant Martínez-Ruíz on October 27, 2005 (**docket entry 141**) and the government's response to defendant's Request for Review filed on October 31, 2005 (**docket entry 144**), said Request for Review is DENIED.

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The Court is convinced that Magistrate-Judge Delgado-Colón neither had feelings of bias or prejudice against defendant Martínez-Ruíz nor prejudged the merits of his motion to suppress. After the government made its final response to the motion to suppress (docket entry 128) and informed that all the attorneys in this case, including defendant's attorney Alexander Zeno, had the opportunity to inspect the equipment used during the recording of the conversations and further informed in that and other motions that the case agent had explained how the recordings were made and under what circumstances, including the fact that the other party to the recorded conversations was a government informant, the Magistrate-Judge felt that the evidentiary hearing was not necessary and discussed the matter with counsel. Mr. Zeno's interpretation of the Magistrate-Judge's motives as improper are not supported by the record. What the record reflects is a legitimate concern over the wise use of judicial resources in a situation which justified it. Defendant and his counsel insist that it is the government that has to prove that the conversations were consensual, although it is undisputed that the conversations are between the defendant and a government informant, in his role as an informant, who used government equipment to record the same. It is defendant who is challenging the admissibility of the conversations and who has the burden of establishing their inadmissibility as trial evidence. After reviewing the record, the Court concludes that there is no need for an evidentiary hearing in this case to determine the consensual nature of the recorded conversations. If defendant has other reasons in support of suppression, he shall state them in detailed form in an informative motion to be filed on or before JANUARY 12, 2006.

Attorney Zeno is admonished that he must address the Magistrate-Judge with the respect due to her personally and to the position that she holds. Calling her a liar, as he has done at page 7 of the Request for Review, places him at the threshold of incurring in contempt of court.

The Magistrate-Judge will determine whether movant raises in his Informative Motion any matter, other than the consensual issue which has been discarded, which justifies the

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setting of an evidentiary hearing on the suppression motion. If she rules in favor of a hearing, the same shall be scheduled by her to be held no later than JANUARY 25, 2006.

SO ORDERED.

At San Juan, Puerto Rico, on December 22, 2005.

S/CARMEN CONSUELO CEREZO
United States District Judge